

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

LAWRENCE J. MESITE,
Plaintiff

v.

NEWTON POLICE OFFICER, DAWN HOUGH,
NEWTON POLICE OFFICER, JOANNE BLAY,
NEWTON POLICE OFFICER, DINA VACCA,
CITY OF NEWTON, SUPERINTENDENT,
KENNETH NELSON AND BRIDGEWATER
STATE HOSPITAL
Defendants

CIVIL ACTION
NO. 04-11942GAO

**MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL**

Defendants City of Newton Police Officers Dawn Hough, Joanne Blay and Dina Vacca have moved to compel the production of medical records by Plaintiff. Defendants submit the instant memorandum illustrating that Plaintiffs must produce the records at issue.

ARGUMENT

Plaintiff has asserted that Defendants violated his civil rights in connection with an incident on September 17, 2001, and Plaintiff's subsequent arrest. (See Complaint). Plaintiff claims that after his arrest, he was placed in Bridgewater State Hospital where he was beaten. (Complaint, ¶¶18, 19).

On or about November 22, 2005, Defendants served upon Plaintiff a First Request for Production of Documents. (Aff. Kahn, ¶3; Exhibit "A"). After granting Plaintiff many extensions of time to enable him to gather the documents sought, Defendants received the following responses to the requests at issue on or about March 22, 2006. (Aff. Kahn, ¶¶4, 5; Exhibit "B").

Request No. 1

All documents relating to physical, mental and emotional damages allegedly sustained by you as a result of the alleged incidents referred to in your Complaint including, but not limited to:

- (a) all hospital reports and other hospital documents; and
- (b) reports, evaluations or notes from treatment by private physicians, therapists or other health care providers.

Response No. 1

(a-b) Mesite has given defendants authorization for the production of his hospital records, documents at Bridgewater State Hospital, Maclean's Clinic in Belmont.

Request No. 2

All documents relating to your physical, mental and emotional condition from 1980 to the present, including but not limited to:

- (a) all hospital reports and other hospital documents; and
- (b) reports, evaluations, or notes from treatment by private physicians, therapists or other health care providers.

Response No. 2

(a-b) Mesite has given defendants blanket authorization for the production of hospital records since 1980 concerning the treatment and hospitalization of Lawrence J. Mesite.

Plaintiff did not produce any responsive documents. (Aff. Kahn, ¶6). Plaintiff has not objected to the production of the documents at issue. However, Plaintiff is attempting to place

the burden on Defendants to obtain Plaintiff's own medical records by stating that he gives Defendants "blanket authorization" to obtain them. This is clearly improper and, more important, not possible given the presence of HIPPA and other laws respecting the sanctity of an individual's medical records.

Defendants advised Plaintiff of their inability to obtain his medical records. (Aff. Kahn, ¶7; Exhibit "C"). However, there has been no further communication from Plaintiff regarding the production of the medical records sought. (Aff. Kahn, ¶8).

Defendants are attempting to obtain the Bridgewater State Hospital records on their own through a Subpoena Duces Tecum and Order of this Court. However, Defendants are not even aware of the identity of all of Plaintiff's physicians and should not be required to produce his medical records.

CONCLUSION

WHEREFORE, Defendants respectfully request that Plaintiff be ordered to obtain and produce the medical records in Request 1 and 2 within sixty days.

DEFENDANTS,
NEWTON POLICE OFFICERS
DAWN HOUGH, JOANNE BLAY
AND DINA VACCA,

By their attorney,

/s/ Donnalyn B. Lynch Kahn

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Dated: